



May 11, 2010

Chairman Julius Genachowski  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room: 8-B201  
Washington, DC 20554

**Re: GN Docket Nos. 09-51 & 09-157, WT Docket Nos. 07-157 & 04-356**

Dear Chairman Genachowski:

During the development of the National Broadband Plan (NBP), the County Executives of America<sup>1</sup> attempted to meet with you in order to convey the views of our members who are elected officials representing over 156 million county residents throughout the United States. Our members have an "outside the beltway" perspective and are directly connected to millions of voters. They see and hear every day the impact that broadband can have on their communities and their residents' economic and educational opportunities. In these difficult economic times with high unemployment and local government budget shortfalls, it is unfortunate that our members have not had their views incorporated into the NBP on how to best address the growing gap between those that can afford broadband and those that cannot. We now write to you once again to explain the importance of the Federal Communications Commission immediately making a free broadband service available in the AWS-3 band in order to allow millions of Americans to finally obtain broadband.

The AWS-3 rulemaking proceeding was commenced in 2007 in response to comments collected over a two year period from over 65,000 citizens and hundreds of local, state and Federal elected and appointed officials supporting the creation of a free nationwide wireless broadband service. On three occasions, CEA filed comments in this rulemaking confirming our unequivocal support for a nationwide free broadband service based on the efficient use of the long dormant AWS-3 spectrum.<sup>2</sup> Although our views were not referenced in the NBP, our oft stated position calling for the rollout of a free nationwide broadband service has been validated by the data from the NBP. Data from the NBP indicates that over 28 million people, comprised primarily of lower income African Americans and Latinos, are not connected because they cannot afford a basic tier broadband service. Indeed, the NBP acknowledged the public interest benefit of eliminating the cost equation in broadband where it stated that the FCC will "consider using spectrum to create a free or low-cost broadband service" in order to address affordability of broadband.

Unfortunately, the NBP also suggests that the AWS-3 band, which has lain fallow for a decade, should be subject to more regulatory delay. As explained below, continued delay in addressing the use of the AWS-3 band frustrates the goals of the NBP and the American Recovery and Reinvestment Act of 2009 (Recovery Act or ARRA). Moreover, the NBP's reasoning behind such a delay plainly ignores record data from the FCC's AWS-3 proceeding as well as data from the National Telecommunications and Information Administration (NTIA) and the Department of Defense ("DoD") demonstrating that the

<sup>1</sup> County Executives of America (CEA) is a non-partisan national association that is dedicated specifically to helping elected county chief executives achieve their county's social and economic development goals through federal and state government advocacy at both the legislative and executive branches. CEA has been in existence for over 40 years and its current membership includes over 700 County Executives, County Judges, Parish and Borough Presidents, City-County Mayors, Commission Presidents and Chairs, all of whom are elected at-large by county residents.

<sup>2</sup> See Letter from Michael Griffin, County Executives of America to Chairman Kevin J. Martin, FCC WT Docket Nos. 07-16 & 07-30 (filed Oct. 4, 2006); Reply Comments of the County Executives of America, WT Docket No. 07-195, (filed Jan. 14, 2008); Comments of the County Executives of America, WT Docket Nos. 07-195 & 04-356, (filed Jul. 25, 2008).



1755-1780 MHz band is not available for pairing with AWS-3 for statutory, technical and practical reasons.

We urge the FCC to expeditiously conclude the AWS-3 proceeding because failing to do so would set a dangerous precedent where FCC is beholden to unsupported arguments that are inconsistent with its own findings and frustrate other statutory and policy goals set by Congress. In this particular case, a truly data-driven process would quickly conclude the proposed pairing inquiry for AWS-3. All of the available data indicates that the 1755-1780 MHz band is not "readily available" as some parties have incorrectly suggested. For nearly a decade, reports from NTIA and the Department of Defense have consistently indicated that the 1755-1780 band is essential to military operations and that the presence of these sensitive systems makes the band inappropriate for the introduction of commercial services.<sup>3</sup> Indeed, Administrator Strickling has recently debunked the "readily available" argument by noting that "[t]he band is used for many critical government operations" and that "[t]he idea that that is something that could be auctioned quickly is not one that I think could come to fruition."<sup>4</sup>

The Recovery Act was signed into law on February 17, 2009 and is one of the most significant pieces of legislation in recent history. Among other things, the Recovery Act was designed to "preserve and create jobs and promote economic recovery; to assist those most impacted by the recession; to provide investments needed to increase economic efficiency by spurring technological advances in science and health; to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits . . ." The unfortunate reality, however, is that in the nearly 15 months since the Recovery Act passed, the FCC has failed to make any spectrum available for Recovery Act funding.

Based on the ARRA and the enabling rules from NTIA, the County Executives of America was authorized by its Board of Directors to apply, on behalf of its participating members, for a \$122 million stimulus grant application for a multi-state broadband network that will provide free broadband to nearly 5 million people who cannot afford access using AWS-3. Recovery Act funds will be used to construct a portion of the proposed network. A nationwide network, however, would provide free broadband wireless service to 156 million residents and public service employees living in all of our 700 plus member counties. CEA's proposed network (or any other investment to make use of AWS-3) will not be able to benefit from the historic opportunity presented by the Recovery Act unless the FCC moves to quickly release this underutilized national asset before the start of the summer.

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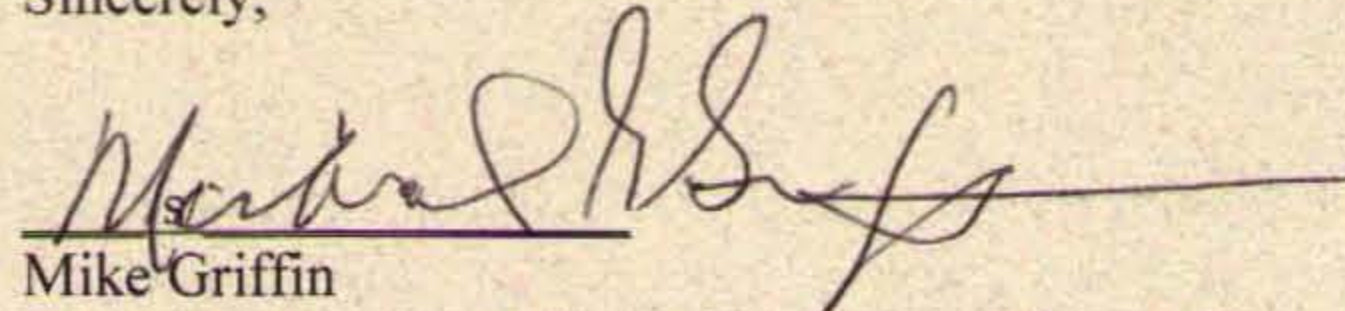
<sup>3</sup> See DOD Strategic Spectrum Plan available at: [http://www.ntia.doc.gov/osmhome/spectrumreform/Spectrum\\_Plans\\_2007/DOD\\_Strategic\\_Spectrum\\_Plan\\_Nov2007.pdf](http://www.ntia.doc.gov/osmhome/spectrumreform/Spectrum_Plans_2007/DOD_Strategic_Spectrum_Plan_Nov2007.pdf); See also Spectrum with Significant Federal Commitments 225 MHz – 3.7 GHz, posted Dec. 12, 2009 (available at [http://www.ntia.doc.gov/advisory/spectrum/meeting\\_files/225\\_3700MHzPresentation.pptx](http://www.ntia.doc.gov/advisory/spectrum/meeting_files/225_3700MHzPresentation.pptx)); *Unmanned Aircraft Systems Roadmap 2005 -2030*. Office of the Secretary of Defense August 4, 2005; See An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands, NTIA (rel. Jul. 22, 2002) available at: <http://www.fcc.gov/3G/3Gva072202.pdf> ("NTIA Report").

<sup>4</sup> See Communications Daily, May 4, 2010.



NTIA is busy evaluating broadband funding opportunities as directed by Congress and the President. Yet, the FCC's needless inquiry into the pairing of AWS-3 with 1755-1780 MHz is frustrating the very investments in broadband adoption envisioned by the Recovery Act. Accordingly, we ask that you and your colleagues at the FCC move forward to make the AWS-3 spectrum available so CEA can make use of BTOP funding to deploy free services across the country using the AWS-3 band.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Griffin", is written over a horizontal line.

Mike Griffin  
Executive Director, County Executives of America

cc: Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Atwell Baker  
Mr. Edward Lazarus  
Ms. Ruth Milkman  
Mr. Bruce Gottlieb  
Mr. John Giusti  
Ms. Angela Giancarlo  
Mr. Louis Peraertz  
Mr. Charles Mathias